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October 16, 2023

The Honorable Michael S. Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Dear Administrator Regan:

On August 9, 2023, New Millennium Concepts, Ltd. (NMCL) and the James B. Shepherd Trust, the brand owner of Berkey Water Systems, filed a lawsuit against the Environmental Protection Agency (EPA) seeking to prevent the EPA from classifying Berkey filters as pesticides. Berkey has provided millions of Americans with gravity-fed mechanical water filters over a span of more than 25 years, never causing harm to anyone.

The EPA has sought to justify this classification by noting that Berkey filters incorporate silver in their design, which is not on its own considered a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or under prior EPA guidance. Millions of water filters incorporate silver and, if regulated as pesticides, will be forced to label their products with aggressive warning signs and register their products as pesticides.

This unprecedented attempt to, arbitrarily and without administrative process, put Berkey Water Systems out of business is an abuse of the EPA's regulatory authority. In no stretch of the imagination is Berkey or any other water-filter brand that incorporates silver engaging in the business of manufacturing pesticides or manufacturing products that are treated with pesticides. The EPA's ruthless and illogical interpretation of FIFRA is self-evidently without merit, and it must be reconciled with reality.

At a time when Americans are increasingly unhealthy and their water filled with contaminants, such as endocrine disruptors, heavy metals, and "forever" chemicals, such as PFAS, the EPA should be pursuing policies within its regulatory authority that incentivize increased use of water-filtration systems, not less.

The EPA must end its attack on Berkey Water Systems immediately and focus on the job it was created to do – keep Americans safe – a job Berkey Water Systems has arguably done more effectively.

Therefore, I write seeking answers to the following questions and request the following information:

- (1) Why has the EPA, after decades, just now sought to change the way it regulates Berkey Water Systems?
- (2) Please provide a copy of any and all policy documents, guidance, or regulations forming the basis of EPA's actions against Berkey Water Systems from January 1, 2022, to the present.
- (3) Is it the EPA's position that incorporating silver or other metals into non-operable, incidental, or cosmetic features of a consumer good qualify that good, on that basis alone, as a pesticide regulable under FIFRA? If not, what is the standard for the incorporation of a metal into product design qualifying that product as a pesticide? Has this standard gone through APA notice-and-comment rulemaking?

Please respond to my questions and provide the requested documents at your earliest convenience. I eagerly await your reply.

Sincerely,



Matt Gaetz
Member of Congress